In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-967

CLAUDE CARTIER, PETITIONER

v.

SECRETARY OF STATE AND COMMISSIONER OF IMMIGRATION AND NATURALIZATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION IN OPPOSITION

Petitioner contends that in remanding to the district court his suit for mandamus relief, with instructions to dismiss it without prejudice to renewal of the action pursuant to 8 U.S.C. 1503, the court of appeals erroneously failed to give *res judicata* effect to a determination of nationality made by the State Department's Board of Appellate Review.

Petitioner, a naturalized citizen, executed a formal renunciation of his citizenship before the United States Consul in Bern, Switzerland, on January 17, 1964, and surrendered his certificate of naturalization (Pet. App. 4a-5a). Accordingly, on March 26, 1964, the Secretary of State approved a certificate of loss of nationality, pursuant to 8 U.S.C. 1501, a copy of which was forwarded to the Immigration and Naturalization Service of the Department of Justice, together with petitioner's certificate of naturalization (Pet. App. 5a).

On January 26, 1972, petitioner filed an administrative appeal with the State Department Board of Appellate Review, pursuant to 22 C.F.R. 50.60,[1] alleging that his renunciation of citizenship had been involuntary because motivated by the necessity of being near his children in France and a fear that continued residence abroad would result in denaturalization pursuant to 8 U.S.C. 1484(a).[2] After considering argument from petitioner and opposition from representatives of the State Department's Passport Office, but without taking evidence, the State Department Board of Appellate Review, by divided vote, found that petitioner's renunciation of citizenship had been involuntary (Pet. App. 6a). Petitioner thereupon requested that the State Department return his certificate of naturalization and issue him a passport. The Immigration and Naturalization Service of the Department of Justice, however, declined to return the certificate, stating that it disagreed with the determination of the State Department Board of Appellate Review (Pet. App. 7a). The State Department Passport Office refused to issue petitioner a passport until the question of the effect of his renunciation of citizenship was clarified.

---

[1]22 C.F.R. 50.60 provides: "A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review."

[2]Prior to his act of renunciation, petitioner had been specifically cautioned that a case was then before the Supreme Court challenging the denaturalization provision (Pet. App. 6a). In fact, four months after the renunciation, this Court held 8 U.S.C. 1484(a) to be unconstitutional. *Schneider* v. *Rusk*, 377 U.S. 163. Both the renunciation and the *Schneider* decision occurred long before Section 1484(a), even if valid, would have caused petitioner's denaturalization.

Petitioner thereupon commenced this action in the United States District Court for the District of Columbia, seeking a writ of mandamus to compel the Commissioner of Immigration and Naturalization to return petitioner's certificate of naturalization and the Secretary of State to issue petitioner a passport, contending that the State Department's determination that his renunciation of citizenship had been involuntary was binding upon the Immigration and Naturalization Service of the Justice Department (Pet. App. 7a).[3] On cross-motions for summary judgment, the district court (characterizing the case as one seeking declaratory rather than mandamus relief) held that the State Department's determination of petitioner's citizenship rights was binding upon the Immigration and Naturalization Service and not subject to review by the Attorney General (Pet. App. 21a-24a). It ordered the Commissioner of Immigration and Naturalization to return petitioner's certificate of naturalization and refrain from obstructing the issuance of petitioner's passport (Pet. App. 25a).[4]

---

[3]After commencement of this action, the Immigration and Naturalization Service referred the conflict between its views and those of the State Department's Board of Appellate Review to the Attorney General for resolution. The Attorney General issued a comprehensive opinion which concluded that petitioner's renunciation of citizenship was voluntary as a matter of law and that he was therefore no longer a citizen (Pet. App. 7a). It was the position of the Attorney General that he was empowered to make this decision for the Executive Branch by virtue of 8 U.S.C. 1103(a). In view of its disposition of the case, the court of appeals did not consider it necessary to pass on the correctness of this interpretation.

[4]Neither the district court nor the court of appeals agreed to stay the district court's order pending appeal, and therefore petitioner's certificate of naturalization has been returned and a passport has been issued to him. Presumably, if the court of appeals' reversal is permitted to stand, petitioner will be required to return the certificate and the passport.

The court of appeals reversed, holding that "judicial intrusion into the administrative decision-making processes" by means of either mandamus or a declaration that a decision by one agency is binding upon another agency was unwarranted, and that the proper route to contest the Immigration and Naturalization Service's decision not to return petitioner's certification of naturalization was by means of an action for a declaration of nationality pursuant to 8 U.S.C. 1503. The court of appeals therefore remanded the case to the district court with instructions to dismiss the petition without prejudice to renewal of the action pursuant to 8 U.S.C. 1503 (Pet. App. 16a-20a).[5]

Contrary to petitioner's contention, the court of appeals properly decline to give *res judicata* effect to the State Department's determination of petitioner's status, or to consider whether the Attorney General had authority to review and override such a determination. Resolution of these issues was unnecessary to the court's decision, which rested upon the availability of 8 U.S.C. 1503 as the proper means of contesting agency determinations of citizenship.

As the court of appeals noted (Pet. App. 13a-15a), the State Department and the Justice Department have differing spheres of responsibility with regard to rights and privileges that flow from citizenship. A determination by the State Department Board of Appellate Review that an applicant is eligible for a passport (22 U.S.C. 212) is not binding upon the Immigration and Naturalization Service, which has concurrent authority to decide whether

---

[5]Prior to argument, the court of appeals granted the Secretary of State's motion to withdraw as an appellant. At the invitation of the court, the Secretary thereupon submitted a memorandum generally supporting petitioner's position. We are accordingly submitting this response solely on behalf of the Commissioner.

such a person is entitled to a certificate of naturalization enabling him to enter the United States and remain without being deported. 8 U.S.C. 1103; 1226; *Ng Yip Yee* v. *Barber*, 210 F. 2d 613, 614 (C.A. 9), certiorari denied, 347 U.S. 988; see also *United States ex rel. Lapides* v. *Watkins*, 165 F. 2d 1017, 1019 (C.A. 2). Conversely, a favorable determination by the Immigration and Naturalization Service in an admissiblity hearing is not binding upon the State Department when application is made for a passport. *Lee Hon Lung* v. *Dulles*, 261 F. 2d 719, 723 (C.A. 9).[6]

Such administrative determinations of entitlement to those rights and privileges of citizenship that fall within that department's sphere of responsibility are not final and binding declarations of citizenship.[7] To the contrary, only the federal courts may make final and binding declarations of citizenship. And, accordingly, pursuant to 8 U.S.C. 1503(a), once such "right or privilege [is denied] by any department or independent agency * * * upon the ground that he is not a national of the United States, such person may institute an action * * * for a judgment declaring him to be a national of the United States * * *." Petition-

[6]In any event, the question of petitioner's citizenship never was properly before the State Department Board of Appellate Review. The Board is set up only to review "administrative holding[s]" of the Department. 22 C.F.R. 50.60. Here, however, petitioner commenced the proceeding with an appeal to the Board without there being any prior "administrative holding" that he was not entitled to a certain right or privilege of citizenship. The Department's preparation of a certificate of loss of nationality was a purely ministerial act following renunciation of citizenship which had no independent legal effect.

[7]Indeed, a favorable determination has only *prima facie* effect at a later proceeding within the same department in which the determination was made. *Lim* v. *Mitchell*, 431 F. 2d 197, 199 (C.A. 9); *Montana* v. *Rogers*, 278 F. 2d 68, 72 (C.A. 7), affirmed *sub nom. Montana* v. *Kennedy*, 366 U.S. 308; *Lew Moon Cheung* v. *Rogers*, 272 F. 2d 354, 362 (C.A. 9).

er's proper cause of action was therefore a suit for declaratory relief, pursuant to 8 U.S.C. 1503.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

APRIL 1975.